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11 Attorneys for Plaintiff  
12 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA, ) Magistrate Case No. 08MJ0085  
16 Plaintiff, )  
17 v. )  
18 SILVESTRE MONTOYA-FLORES, )  
19 Defendant. )  
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**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

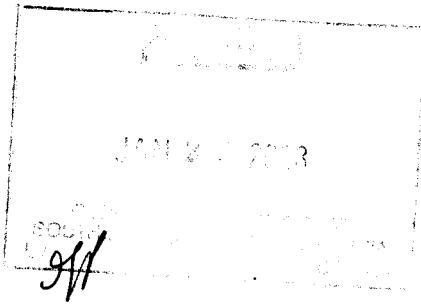
**(Pre-Indictment Fast-Track Program)**

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and  
18 Caroline P. Han, Assistant United States Attorney, and defendant SILVESTRE MONTOYA-  
19 FLORES, by and through and with the advice and consent of defense counsel, ROSELINE D.  
20 FERAL, that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
25 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.  
26 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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28 CPH:es:1/23/08



1           2.    Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3.    Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **February 13, 2008**.

6           4.    The material witnesses, Maria Elena Soto-Martinez, Elizabeth Loaeza-Arizmendi and  
7 Jesus Abraham Jimenez-Vivanco, in this case:

8           a.    Are aliens with no lawful right to enter or remain in the United States;  
9           b.    Entered or attempted to enter the United States illegally on or about  
10 January 10, 2008;

11           c.    Were found in a vehicle driven by defendant at the San Ysidro, California Port  
12 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that they were  
13 aliens with no lawful right to enter or remain in the United States;

14           d.    Were paying \$2,000 - \$3,500 to others to be brought into the United States  
15 illegally and/or transported illegally to their destination therein; and,

16           e.    May be released and remanded immediately to the Department of Homeland  
17 Security for return to their country of origin.

18           5.    After the material witnesses are ordered released by the Court pursuant to this  
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any  
21 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral  
22 attack, that:

23           a.    The stipulated facts set forth in paragraph 4 above shall be admitted as  
24 substantive evidence;

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28           Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Silvestre Montoya-Flores

1                   b.     The United States may elicit hearsay testimony from arresting agents  
2 regarding any statements made by the material witness(es) provided in discovery, and such  
3 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements  
4 against interest of (an) unavailable witness(es); and,

5                   c.     Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
6 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted  
7 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant  
8 waives the right to confront and cross-examine the material witness(es) in this case.

9                   6.     By signing this stipulation and joint motion, defendant certifies that defendant has  
10 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
11 further that defendant has discussed the terms of this stipulation and joint motion with defense  
12 counsel and fully understands its meaning and effect.

13                  Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
14 immediate release and remand of the above-named material witness(es) to the Department of  
15 Homeland Security for return to their country of origin.

16                  It is STIPULATED AND AGREED this date.

17                  Respectfully submitted,

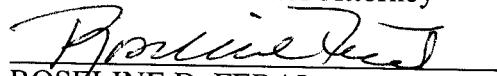
18                  KAREN P. HEWITT  
19                  United States Attorney

20                  Dated: 1/29/08.

  
CAROLINE P. HAN

Assistant United States Attorney

21                  Dated: 1/28/08.

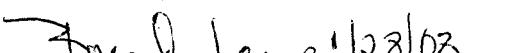
  
ROSELIN D. FERAL

Defense Counsel for Montoya-Flores

22                  Dated: 1/28/08.

  
SILVESTRE MONTOYA-FLORES  
Defendant

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28                  Stipulation of Fact and Joint Motion for Release of  
                        Material Witness(es) And Order Thereon in  
                        United States v. Silvestre Montoya-Flores

  
Translated by: Danielle Lynn  
3 OA 1/25/08

08MJ0085

## ORDER

Upon joint application and motion of the parties, and for good cause shown,  
**THE STIPULATION** is admitted into evidence, and,  
**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.  
**SO ORDERED.**

**SO ORDERED.**

Dated: 1-28-08

John H. Thomas  
United States Magistrate Judge